

Ent: 326986 - Pg 1 of 13
Date: 6/4/2009 7:56 AM
Fee: \$34.00 CREDIT CARD
Filed By: MT
CALLEEN B PESHELL, Recorder
Tooele County Corporation
For: OM ENTERPRISES CO

WHEN RECORDED, RETURN TO:

OM Enterprises Company
c/o Kennecott Utah Copper LLC
Kelly Payne, Environmental Remediation Manager
P.O. Box 6001
Magna, UT 84044-6001

RECEIVED

JUN 25 2009

**Environmental response &
Remediation**

With Copies To:

Division Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
168 North 1950 West
P. O. Box 144840
Salt Lake City, UT 84114-4840

and

Regional Institutional Control Coordinator, EPR-SR
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

Space above for County Recorder's Use
Tax Serial No. 01-186-0-0004

MEMORANDUM OF ENVIRONMENTAL COVENANT

THIS MEMORANDUM OF ENVIRONMENTAL COVENANT ("Memorandum"), is made effective as of the 26 day of May, 2009, by OM Enterprises Company, a Utah corporation (together with its successors and assigns, the "Owner"), with respect to the following:

A. Owner owns or controls approximately 35.40 acres of unimproved real property ("Property") located in Tooele County, State of Utah and more particularly described as Lot 2, Section 24, Township 4 South, Range 5 West, Salt Lake Base and Meridian.

B. Owner entered into that certain Environmental Covenant Agreement ("Environmental Covenant") with the United States Environmental Protection Agency ("EPA") and the Utah Department of Environmental Quality ("DEQ"). A copy of the Environmental Covenant is attached hereto as Exhibit A and by this reference made a part hereof.

SCANNED

DERR 2009-010095

1. NOTICE OF ENVIRONMENTAL COVENANT. This instrument is notice of an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 *et seq.* concerning the Property. Owner, whose address is listed below is the "Holder" of this Environmental Covenant, as defined in Utah Code Ann. § 57-25-102(6).

2. ACTIVITY AND USE LIMITATIONS. Reference is particularly made to Section 5 of the Environmental Covenant wherein Owner has agreed to certain activity and use limitations with respect to the Property as part of the CERCLA response action described in the Jacobs Smelter Superfund Site administrative record located at the Utah Department of Environmental Quality offices and at the EPA Region 8 Records Center. Reference is particularly made to Section 3 of the Environmental Covenant wherein Owner's obligations are imposed on agents, assigns and successors in interest, including any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees (all of whom are hereinafter referred to as "Transferee").

3. RUNNING WITH THE LAND. The Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth therein.

4. PURPOSE OF MEMORANDUM. This Memorandum is prepared pursuant to Section 16 of the Environmental Covenant. This Memorandum in no way modifies the express and particular provisions of the Environmental Covenant. In the event of a conflict between the terms of the Environmental Covenant and the terms of this Memorandum, the terms of the Environmental Covenant shall control.

5. ADDITIONAL INFORMATION. Additional information regarding this Memorandum may be obtained by contacting the following:

Owner:	OM Enterprises Company c/o Kennecott Utah Copper 4700 West Daybreak Parkway South Jordan, Utah, 84095 Attn: Environmental Remediation Manager
DEQ:	Division Director Division of Environmental Response and Remediation Utah Department of Environmental Quality 168 North 1950 West P.O. Box 144840 Salt Lake City, Utah 84114-4840
EPA:	Regional Institutional Control Coordinator, EPR-SR U.S. EPA 1595 Wynkoop Street Denver, CO 80202-1129

IN WITNESS WHEREOF, Owner has executed this instrument as of the date first above written.

OWNER:

OM Enterprises Company, a Utah corporation

Date: May 26, 2009

By: [Signature]
Print Name: Dean H. Anderson
Title: VP Finance

STATE OF UTAH

)
: ss.

COUNTY OF SALT LAKE

)

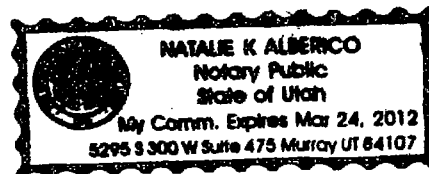
The foregoing instrument was acknowledged before me this 26 day of May, 2009,
by Dean H. Anderson, the VP Finance
OM Enterprises Company, a Utah corporation.

Natalie K. Alberico
NOTARY PUBLIC

My Commission Expires:

March 24, 2012

Residing at:



**EXHIBIT A
TO
MEMORANDUM OF ENVIRONMENTAL COVENANT**

ENVIRONMENTAL COVENANT

See Attached

After recording, return to:

OWNER:

OM Enterprises Company
c/o Kennecott Utah Copper Corporation
Environmental Remediation Manager
P.O. Box 6001
Magna, UT 84044-6001

With copies to:

Division Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
168 North 1950 West
P. O. Box 144840
Salt Lake City, UT 84114-4840

and

Regional Institutional Control Coordinator, EPR-SR
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by OM Enterprises Company, a Utah corporation (OM), the United States Environmental Protection Agency ("EPA") and the Utah Department of Environmental Quality ("DEQ") pursuant to Utah Code Ann. §§ 57-25-101 *et seq.* for the purpose of subjecting the Property described in Exhibit A to the activity and use limitations set forth herein.

The Property is located northwest of Stockton, Tooele County, Utah, and is within the Jacobs Smelter Superfund Site. The Property is more particularly described in Exhibit A. The activity and use limitations are necessary because the Property contains elevated levels of hazardous substances in the soils which underlie a gravel hill to the west of the railroad easement held by the Union Pacific Railroad ("UPRR"). Additional information is available in the Jacobs Smelter Superfund Site files for Lot 2, Section 24, T. 4 South, R. 5 West, also known as the Kennecott Parcel at Utah Department of Environmental Quality and in the administrative record on file with EPA in Denver, Colorado at 1595 Wynkoop Street, Denver 80202-1129. EPA and DEQ agree that it is in the best interests of the public to have notice of the presence of elevated levels of hazardous substances in the soils on the Property and to have limited use controls in place.

Now therefore, Owner (defined in paragraph 3), EPA and DEQ agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 *et seq.*

2. Property. This Environmental Covenant concerns property located at approximately Lot 2, Section 24, T4S, R5W, in Tooele County near the Town of Stockton Utah comprising parcel number 01-186-0-0004, as shown on the attached Exhibit A, ("Property Legal Description").

3. Owner. OM Enterprises Company is the present owner of the Property. Consistent with paragraph 6 herein, the obligations of the Owner are imposed on agents, assigns and successors in interest, including any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees (all of whom are hereinafter referred to as "Transferee"). The term "Owner" or "Owners" includes the term "Transferee" or "Transferees" unless this instrument clearly indicates otherwise.

4. Holders. Owner, whose address is listed above is the "Holder" of this Environmental Covenant, as defined in Utah Code Ann. § 57-25-102(6).

5. Activity and Use Limitations. As part of the CERCLA response action described in the Jacobs Smelter Superfund Site administrative record located at the Utah Department of Environmental Quality offices and at the EPA Region 8 Records Center, Owner hereby imposes and agrees to the following:

5.1 Prior to taking any action at the Property which might disturb and thus cause release of hazardous substances Owner shall verify the presence or absence of heavy metals in soils in the areas to be disturbed. The "Trigger Level" for purposes of this Covenant is a surface lead concentration greater than 500 ppm and subsurface lead concentrations greater than 800 ppm. Unless the sampling analysis indicates levels of heavy metals less than the Trigger Level, all Owners agree to comply with Paragraph 5.2 herein. If the levels of heavy metals in the soils in and around the area to be disturbed are less than the Trigger Level as that term is defined herein, there are no limitations on the uses of the Property.

5.2 If heavy metals above the applicable Trigger Level are to be disturbed, Owner must appropriately protect workers and nearby receptors by controlling releases of heavy metals.

(a) Notification and Written Workplan – Prior to initiating any project on the Property which would disturb soils containing lead greater or equal to the Trigger Level, the Owner must submit and obtain written approval of a written workplan. The workplan must contain sufficient sampling and analysis to demonstrate the levels and locations of lead above the Trigger Level to be disturbed. The workplan shall be submitted to DEQ, EPA, and the local authority

which grants building permits, and shall describe the nature of the project and the work practices and engineering controls to be used, the location of potential receptors and the steps Owner will take to cutoff the potential pathways and to prevent exposing workers, the public and the environment. EPA and DEQ will coordinate to determine the appropriate level of government oversight and will notify the Owner which agency will be conducting oversight of the project. In the event any action or occurrence on or relating to the Property constitutes an emergency situation or which may present an immediate threat to public health or welfare or the environment, and prevents Owner from complying with the requirements of this paragraph, Owner shall immediately notify EPA and DEQ. The notification shall include details of the emergency situation and any immediate response actions needed.

- (b) Existing Regulations – Any activity at the Property which disturbs the heavy metals above the Trigger Level should be conducted, at a minimum, in compliance with the then existing local, State and Federal regulations. The materials disturbed should be properly handled, transported and disposed of, in accordance with good work practices and then existing laws and regulations.
- (c) Experienced Workforce - Owner shall utilize experienced and qualified workers. Use of inexperienced workers may be a cause for rejecting the workplan or for enforcement action.
- (d) Oversight Costs - Owner shall timely pay DEQ and/or EPA for oversight and review in accordance with DEQ's and/or EPA's applicable fee schedule.

6. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice indicating the activity and use limitations (from Section 5) set forth in this Environmental Covenant and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

NOTICE OF ENVIRONMENTAL COVENANT

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED 200__, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON ____, 200__, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

[Insert the language that describes the activity and use limitations exactly as they appear from Paragraph 5 herein.]

7. Rights of Access. Owner hereby grants to the DEQ and EPA, their respective agents, contractors, and employees, a right of access to the Property for implementation or enforcement of this Environmental Covenant. DEQ and EPA shall coordinate with Owner and give reasonable notice before entering the Property or any buildings unless there is an emergency requiring immediate action by DEQ or EPA.

8. Compliance Reporting. Upon request, Owner shall submit to the DEQ and EPA written verification of compliance with the activity and use limitations contained herein. If the Owner fails to do so, the DEQ and/or EPA may inspect and prepare a status report and recover its costs from the Owner.

9. Notification of Conveyance. Owner shall notify the DEQ and EPA within 20 days following any conveyance of an interest in any portion of the Property. Owner's notice shall include the name, address, and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and a surveyed or un-surveyed plat that shows the boundaries of the property being transferred.

10. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein.

11. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann. § 57-25-111 or CERCLA § 107, 42 U.S.C. § 9607. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ or EPA from exercising any authority under applicable law. This Environmental Covenant may also be enforced by EPA pursuant the Administrative Order on Consent for Removal Action between EPA and Owner dated _____ and pursuant to 42 U.S.C. Section 101 *et seq.*

12. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- 12.1 that the Owner is the sole owner of the Property;
- 12.2 that the Owner holds fee title to the Property;
- 12.3 that the Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- 12.4 that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and

12.5 that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected;

13. Amendment or Termination. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by all of the following: the Owner or Transferee, EPA and DEQ, pursuant to Utah Code Ann. § 57-25-110 and other applicable law. Termination is appropriate if hazardous substances which underlie the gravel hill to the west of the UPRR easement are removed pursuant to a work plan approved by EPA and/or DEQ prior to initiation of such work. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner shall file such instrument for recording with the Tooele County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ and EPA.

14. Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

16. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Tooele County Recorder's Office.

17. Effective Date. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Tooele County Recorder.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to DEQ , EPA and the local Mayor's Office of Stockton, Utah.

19. Notice. Unless otherwise notified in writing by or on behalf of the current owner, EPA or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

The State of Utah:

Division Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
168 North 1950 West
P.O. Box 144840
Salt Lake City, Utah 84114-4840

EPA

Regional Institutional Control Coordinator, EPR-SR
U.S. EPA
1595 Wynkoop Street
Denver, CO 80202-1129

Owner

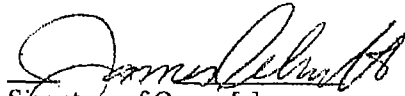
OM Enterprises Company
c/o Kennecott Utah Copper Corporation
Environmental Remediation Manager
P.O. Box 6001
Magna, UT 84044-6001

Signature Page by Owner to Environmental Covenant

Page 1 of 3

The undersigned representative of Owner represents and certifies that s(he) is authorized to execute this Environmental Covenant.

IT IS SO AGREED:


Signature of Owner[s]

James Schulte Vice President
Printed Name and Title Long Range Planning

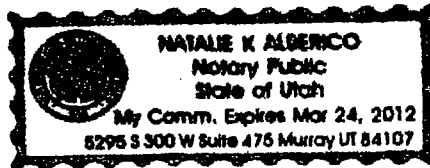
9/30/08
Date

State of Utah)
County of Salt Lake) ss:

Before me, a notary public, in and for said county and state, personally appeared James Schulte, a duly authorized representative of OM Enterprises, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of DME.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 30 day of July, 2008.


Natalie K. Alberico
Notary Public




Signature Page by EPA Region 8 to Environmental Covenant

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United States Environmental Protection Agency


Matt Cohn, Supervising Attorney
Legal Enforcement Program

Date 8/27/08

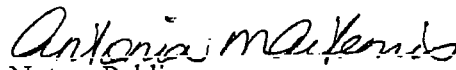

Kelcey Land, Acting Director
Technical Enforcement Program

Date 8/27/08

State of Colorado)
) ss:
County of Denver)

Before me, a notary public, in and for said county and state, personally appeared Matt Cohn and Kelcey Land, of Legal Enforcement and Technical Enforcement Programs at the United States Environmental Protection Agency, who acknowledged to me that they did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 27th day of August, 2008.

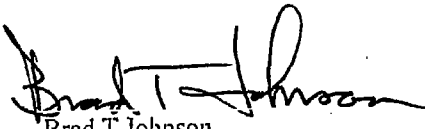

Notary Public

Signature Page by State of Utah to Environmental Covenant

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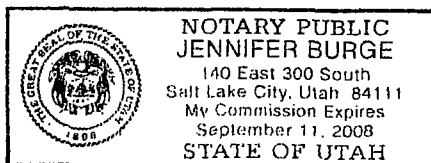
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

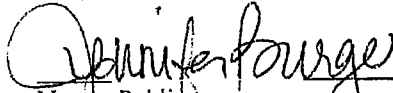
The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Sections 57-25-102(2) and 57-25-104(1)(e).

By: 
Name: Brad T Johnson
Title: Director, Division of Environmental
Response and Remediation,
Utah Department of Environmental
Quality

STATE OF UTAH)
) ss.
County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Brad T Johnson, an authorized representative of the Utah Department of Environmental quality, who acknowledged to me that he did execute the foregoing instrument this 21 day of August, 2008.




Notary Public
My Commission expires: 9-11-08